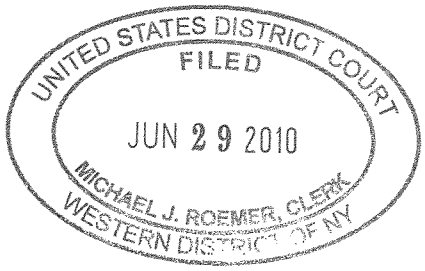
Honorable court of court
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK
BUFFALO DIVISION

SHANE C. BUCZEK, A U.S. TRUST Petitioner	§	this brief is copyrighted
	§	© 2010
	§	09-CR-121-S
Vs.	§	09-CR-141-S
	§	08-CR-054-S,
	§	
	§	
UNITED STATES OF AMERICA	§	copyright 2010
UNITED STATES PROBATION	§	Verified
Respondents	§	Affidavit
	§	



MOTION TO TAKE JUDICIAL NOTICE OF THE DETERMINATION BY THE DOJ THAT TITLE 18 (1948) IS UNCONSTITUTIONAL AND OF THE FAIR WARNING DOCTRINE

I, shane-christopher family of Buczek as third-party intervener and grantor for the alleged defendant SHANE C. BUCZEK a U.S. TRUST declare under pains of penalty and perjury that the following is true, correct and complete and not misleading to the best of my knowledge and that I am over 18 and competent to testify to the following from my first hand knowledge:

Petitioner, presenting and requesting a ***Constitutional court***, and moves the court to take mandatory judicial notice of the admissions of the BOP director that Title 18 (1948) was not constitutionally passed and of the Fair Warning Doctrine, which prevents this court from invoking any prior statute to claim jurisdiction. Petitioner incorporates Appendix A, by reference.

A. BACKGROUND OF ARGUMENT

Petitioner's prior filings attacked, based on judicially noticed facts and well-settled law, the invalidity of Public Law 80-772 and a fortiori 18 USC § 3231, which "gave" the court its "jurisdiction" to try and convict Petitioner. 18 U.S.C. § 3231 is totally interdependent on the validity of H.R. 3190 and Public Law 80-772 of the 80th Congress (1947-1948), as it is part of that statute and under the ***In Toto*** rule, if the statute is invalid, its parts are invalid. Since the facts of the case establish that Public Law 80-772 was never Constitutionally passed by the House of Representatives since ***no quorum*** was in place on May 12, 1947 when the House voted on the bill, the only vote taken by the House in 1947, and the House did not vote on the bill in 1948, then it stands a fortiori that 18 U.S.C. § 3231 was never enacted into positive law, is likewise unconstitutional on its face, and is ***void ab initio***. Without jurisdiction of the court under 18 USC § 3231, the court's jurisdictional authority reverts automatically back to the prior act, 18 USC §§ 546 and 547 (1940). However, the jurisdiction of the court pursuant to 18 USC §§ 546 and 547 (1940) only addresses the statutes in that 1940 code, and was ***repealed by Congress***.[1] Petitioner was not indicted or convicted pursuant to any of the statutes in that code, which carry different penalty provisions, and, therefore, the court neither had nor has jurisdiction over Petitioner. Thus Petitioner's pre sentence is illegal on its face. The only other statute, as mentioned in the letter by the Head of the BOP, attached as Appendix A, is the 1909 statute. Mr. Lappin's letter, while correct in his investigation and determination that 18

[1] On June 26, 1948, President Truman signed into law Public Law 80-773 enacting into positive law Title 28, United States Code. Act of June 25, 1948, Ch. 646, § 1, 62 Stat. 869. That Act ***positively repealed the former criminal jurisdiction granted to the district courts***. id., § 39 *et seq.*, 62 Stat. 991 *et seq.* (positive repeal listing former 28 U.S.C. § 41, ¶ 2 in schedule of repealed statutes).

USC section 3231 is invalid, is fatally flawed related to the 1909 enactment and his determination to imprison US citizens, as will be shown herein.

B. Petitioner Now Presents the Evidence that the DOJ Admits the Invalidity of Title 18 and 18 USC section 3231 (1948) And the Inability to Use the Prior Version of the Statute from 1940

Petitioner moves the court to take mandatory judicial notice of Appendix A, a true and correct copy of the letter from the head of the BOP in which he, after extensive investigation admits that Public Law 80-772 was never constitutionally passed by Congress. See Appendix A.

C. Petitioner Takes Judicial Notice of the Fair Warning Doctrine

Petitioner takes mandatory judicial notice of the Fair Warning Doctrine and Supporting case law, which establishes that neither the bop nor any federal court can claim jurisdiction pursuant to the prior Title 18 statute passed in 1909?

The same day President Truman signed into law Public Law 80-773 enacting into positive law Title 28, United States Code. Act of June 25, 1948, Ch. 646, § 1, 62 Stat. 869, the President signed an act positively repealing the former criminal jurisdiction granted to the district courts. id., § 39 *et seq.*, 62 Stat. 991 *et seq.* (positive repeal listing former 28 U.S.C. § 41, ¶ 2 in schedule of repealed statutes). Therefore, with a repealed prior statute, no jurisdiction is created for the court.

The letter from Harry Lapin attempts to somehow invoke jurisdiction pursuant, therefore, indirectly acknowledging the invalidity of the 1940 statute, through the prior enactment in 1909. That assumption is fatally flawed because it is in violation of the Fair Warning Doctrine.

Fair warning doctrine invokes due process rights and requires that criminal statute at issue be sufficiently definite to notify persons of reasonable intelligence that their planned conduct is criminal. *United States v. Nevers*, 7 F.3d 59 (5th Cir. 1993). See *United States ex. Rel. Clark v. Anderson*, 502 F.2d 1080(3d Cir. 1974)(The notice requirements of Due Process would not permit a state, after ruling one of its criminal statutes was overly vague, to apply that statute's superseding predecessor statute in the very case which ruled the successor statute unconstitutional).

In *United States ex. Rel. Clark v. Anderson*, 502 F.2d 1080(3d Cir. 1974), 502 F.2d 1080, 1081-1082, the court found that at the time the offense occurred and the accused was indicted, "the state of Delaware had published and was holding out the new [statute] as its only proscription of such misconduct as the indictment charged." The crime was also not a crime at common law. The court ruled the new statute unconstitutional. ***And by definition, an unconstitutional statute is one that fails to give fair notice that particular conduct is proscribed by the state.*** See *United States v. Harris*, 1954, 347 U.S. 612, 617, 98 L.Ed. 989, 74 S.Ct. 808; *Connally v. General Construction Co.*, 1926, 269 U.S. 385, 391, 70 L.Ed. 322, 46 S.Ct. 126. Thus, the state's own interpretation of the new statute and its rejection of that section as a statutory basis for Clark's prosecution caused the court to hold that the new statute did not provide constitutionally adequate notice.

The *Clark* court determined that the defendant's conviction **could be upheld only if** the old statute, the supersession of which had been legislatively declared and publicly announced, could continue to serve as notice of the criminality of defendant's conduct. In order to reach that conclusion the court decided that one would have to reason, first that

the new statute on its face gave adequate notice of its own invalidity, and second, that the public, thus informed, was then put on further notice that the officially announced statutory repeal or supercession of the old statute was legally ineffective. Id.

The court concluded that such reasoning was "too tortured and too far removed" from reality to satisfy the due process requirement that, at the time of the alleged offense, the accused shall have been on notice that his conduct was proscribed by the criminal law. The court could not even surmount the first hurdle that the new statute could serve as notice of its own invalidity. Without that notice, no occasion was available to consider the old statute as possibly relevant.

As in the *Clark* case, and its Supreme Court precedents, to meet Due Process, Public Law 80-772 and 18 U.S.C. § 3231 would have had to give adequate public notice on their faces of their own invalidity and the public would have to have been put on further notice that the officially announced statutory repeal or supercession of the old statutes was legally effective. The court can not even reach the first hurdle, much less the second one. The court obtained its jurisdiction to prosecute crimes pursuant to 18 U.S.C. § 3231. Without proper notice of the invalidity of the statute, defendant's indictment and conviction can not be upheld and the court has only one choice, to order dismissal of defendant's indictment and conviction ab initio.

According to standing precedent, this court had absolutely no jurisdiction to prosecute Defendant under either 18 U.S.C. § 3231 or the prior enactment in 1940.

LACK OF JURISDICTION

"Federal courts are courts of limited jurisdiction ... Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction." Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxite de Guinea, 456 U.S. 694, 701 (1982); Kline v. Burke Constr. Co., 260 U.S. 226, 234 (1922) (all lower federal courts "derive[] [their] jurisdiction wholly from the authority of Congress"); United States v. Hudson & Goodwin, 11 U.S. 32, 33 (1812) (federal courts "possess no jurisdiction but what is given to them by the power that creates them."). United States v. Hall, 98 U.S. 343, 345 (1879) (federal "courts possess no jurisdiction over crimes and offenses ... except what is given to them by the power that created them"); Hudson & Goodwin, 11 U.S. at 33-34. See also, *e.g.*, United States v. Wiltberger, 18 U.S. 76, 95-105 (1820) ("the power of punishment is vested in the legislative, not the judicial department," criminal statutes are to be construed strictly, "probability" cannot serve to "enlarge a statute" and an offense not clearly within the terms of a statute precludes federal court jurisdiction).

According to standing precedent, this court had absolutely no jurisdiction to prosecute Defendant under either 18 U.S.C. § 3231 or even the prior enactments.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner submits this Notice by Affidavit and respectfully moves this Honorable Court to:

A. Follow the Constitution of the United States by Declaring that it is a Constitutional Court;

B. Take judicial notice of the facts established as a matter of law herein;

D. Based on those judicially noticed facts, Issue an immediate order declaring Petitioner actually innocent of the alleged crimes she is charged with;

E. Declare Public Law 80-772 and 18 USC section 3231 unconstitutional and the prior enactments to Title 18 in 1940 and 1909 of no force and effect;

F. Declare that the district court had no jurisdiction pursuant to the 1940 or 1990 enactments of Title 18 of the criminal code;

G. Declare Petitioner actually innocent of any alleged crimes charged;

H. Grant such further relief as this Court deems just and proper.

I. Determine whether any member of this court has violated a criminal code by their actions and whether a report should be made to authorities.

Done this 29th day of June, 2010.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify that the facts stated herein are true and correct under the penalty of perjury as provided by 28 USC Section 1746, that I am over the age of 18, and that I have firsthand knowledge of the facts stated herein.

In Trust

BY: Shane-

shane-christopher:buczek
as third party intervener and
Grantor/Beneficiary for:
SHANE C. BUCZEK a US TRUST
All rights reserved Without Prejudice
Without recourse UCC 1-308
6.29.2010

JURAT

ERIE COUNTY)
) ss.
NEW YORK STATE)

The above named Libellant, **shane-christopher:buczek**, as third party intervener and Grantor/Beneficiary for: for **SHANE CHRISTOPHER BUCZEK** appeared before me, a Notary, subscribed, sworn to the truth of this **Petition**

Under oath this 29th day of June, 2010,

Linda M. Potwora
Notary SEAL

My Commission expires 2/28/2014

LINDA M. POTWORA
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES FEB. 28, 2014

CERTIFICATE OF SERVICE

On this the 29th day of June, 2010, a true and correct copy of this Notice was served on the Office of the US Attorney for the opposing party as required by law. DONE BY THE CLERK OF THE COURT.

THE CLERK OF COURT

MR. BUCZEK: That's enough. I don't want to hold you up anymore. I would like to talk to you, but, you know, I wish I could, but --

THE COURT: But the rules. So, you know, live by the rules. But be careful. You're on release. There are specific conditions. Review the release conditions with the probation office just to reinforce them so that, you know, we don't wind up with more problems than we need.

MR. BUCZEK: Judge, there won't be any problems. It's just that I have a certain belief system that I'm not a U.S. citizen. I will save it for later. I didn't have the opportunity to reflect on that during the trial.

THE COURT: Okay. All right.

MR. BUCZEK: Thank you.

THE COURT: Okay. Thank you.

MS. BAUMGARTEN: Thank you, Judge.

* * * * * *

NO Answer means

Consent

Appendix “A”

Harley G. Lappin

From: "Harley G. Lappin" <harley.lappin@usdoj.gov>
Sent: Monday, July 27, 2009 3:17 PM

Attention all Department Heads, there has been a large volume of inmate Requests for Administrative Remedies questioning the validity of the Bureau's authority to hold or classify them under 18 U.S.C. §§ 4081, et seq., (1948). On the claim that Public Law 80-772 was never passed or signed in the presence of a Quorum or Majority of both Houses of Congress as required by Article I, § 5, Clause 1 of the Constitution. Although most courts have, thus far, relied on Field v. Clark, 143 U.S. 649(1892) to avoid ruling on the merits of these claims, however, there have been some which have stated that they were not bound by the Field case, but those cases did not involve any Quorum Clause challenge. So out of an abundance of caution, I contacted the Office of Legal Counsel, the National Archives and the Clerk of the House of Representatives to learn that there is no record of any quorum being present during the May 12, 1947 vote on the H.R. 3190 Bill in the House (See 93 Cong.Rec. 5049), and the record is not clear as to whether there was any Senate vote on the H.R. 3190 Bill during any session of the 80th Congress. There is only one Supreme Court case that says in order for any bill to be valid the Journals of both Houses must show that it was passed in the presence of a Quorum. See United States v. Ballin, Joseph & Co., 144 U.S. 1, 3 (1892). The Clerk of the House states that the May 12, 1947 vote was a 'voice vote,' but the Parliamentarian of the House states that a voice vote is only valid when the Journal shows that a quorum is present and that it's unlawful for the Speaker of the House to sign any enrolled bill in the absence of a quorum. On May 12, 1947, a presence of 218 Members in the hall of the House was required to be entered on the Journal in order for the 44 Member 38 to 6 voice vote to be legal. It appears that the 1909 version of the Federal Criminal Code has never been repealed. Therefore, in essence, our only true authority is derived from the 1948 predecessor to Public Law 80-772. "Although adjudication of the constitutionality of congressional enactments has generally been thought to be beyond the jurisdiction of federal administrative agencies, this rule is not mandatory," according to the Supreme Court in the case of Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 215 (1994). Therefore, the Bureau under the advise of the Legal Counsel feels that it is in the best interest of public safety to continue addressing all of these Administrative Remedy Requests by stating that only the Congress or courts can repeal or declare a federal statute unconstitutional.

Harley G. Lappin
Director, Federal Bureau of Prisons

NANCY ERICKSON
SECRETARY

SUITE S-312
THE CAPITOL
WASHINGTON, DC 20510-7100
(202) 224-3622

United States Senate

OFFICE OF THE SECRETARY

March 9, 2009

Mr. Wayne E. Matthews
713 Bonnie Meadow Lane
Ft. Washington, MD 20744

Dear Mr. Matthews:

Thank you for your recent letter requesting confirmation on the status of H.R. 3190 from the 80th Congress.

I asked the Senate Historian's office to review the correspondence you enclosed, and they were able to verify that no action was taken by the Senate on H.R. 3190 prior to the December 19, 1947 *sine die* adjournment. I have enclosed relevant pages from the *House Journal* and *Congressional Record* for your reference.

Sincerely,

Nancy Erickson

Nancy Erickson
Secretary of the Senate

NE:rwp

Enclosures

[DOCID: f:hc241rds.txt]
106th CONGRESS
2d Session
H. CON. RES. 241

IN THE SENATE OF THE UNITED STATES

January 27, 2000

Received

CONCURRENT RESOLUTION

Providing for a joint session of Congress to receive a message from the President on the state of the Union.

Resolved by the House of Representatives (the Senate concurring), That the two Houses of Congress assemble in the Hall of the House of Reresentatives on Thursday, January 27, 2000, at 9 p.m., for the purpose of receiving
such communication as the President of the United States shall be pleased to make to them.

Passed the House of Representatives January 27, 2000.

Attest:

JEFF TRANDAHL,

Clerk.